

By: Shaheen

H.B. No. 762

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement by certain governmental entities of state and federal laws governing immigration.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 11, Local Government Code, is amended by adding Chapter 364 to read as follows:

CHAPTER 364. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS

Sec. 364.001. DEFINITIONS. In this chapter:

(1) "Immigration laws" means the laws of this state or federal law relating to immigrants or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.).

(2) "Lawful detention" means the detention of an individual by a local entity for the investigation of a criminal offense. The term excludes a detention if the sole reason for the detention is that the individual:

(A) is a victim of or witness to a criminal offense; or

(B) is reporting a criminal offense.

(3) "Local entity" means:

(A) the governing body of a municipality, county, or special district or authority, subject to Sections 364.002(a) and (b);

(B) an officer or employee of or a division,

1 department, or other body that is part of a municipality, county, or
2 special district or authority, including a sheriff, municipal
3 police department, municipal attorney, or county attorney; and

4 (C) a district attorney or criminal district
5 attorney.

6 Sec. 364.002. APPLICABILITY OF CHAPTER. (a) This chapter
7 does not apply to a school district or open-enrollment charter
8 school. This chapter does not apply to the release of information
9 contained in education records of an educational agency or
10 institution, except in conformity with the Family Educational
11 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

12 (b) This chapter does not apply to a hospital or hospital
13 district created under Subtitle C or D, Title 4, Health and Safety
14 Code, or a hospital district created under a general or special law
15 authorized by Article IX, Texas Constitution, to the extent that
16 the hospital or hospital district is providing access to or
17 delivering medical or health care services as required under the
18 following applicable federal or state laws:

- 19 (1) 42 U.S.C. Section 1395dd;
- 20 (2) 42 U.S.C. Section 1396b(v);
- 21 (3) Subchapter C, Chapter 61, Health and Safety Code;
- 22 (4) Chapter 81, Health and Safety Code; and
- 23 (5) Section 311.022, Health and Safety Code.

24 (c) Subsection (b) does not exclude the application of this
25 chapter to a commissioned peace officer employed by or commissioned
26 by a hospital or hospital district subject to Subsection (b).

27 Sec. 364.003. LOCAL GOVERNMENT POLICY REGARDING

1 IMMIGRATION ENFORCEMENT. (a) A local entity shall not adopt a
2 rule, order, ordinance, or policy under which the entity prohibits
3 the enforcement of immigration laws.

4 (b) In compliance with Subsection (a), a local entity shall
5 not prohibit a person who is a commissioned peace officer described
6 by Article 2.12, Code of Criminal Procedure, a corrections officer,
7 a booking clerk, a magistrate, or a district attorney, criminal
8 district attorney, or other prosecuting attorney and who is
9 employed by or otherwise under the direction or control of the
10 entity from doing any of the following:

11 (1) inquiring into the immigration status of a person
12 under a lawful detention or under arrest;

13 (2) with respect to information relating to the
14 immigration status, lawful or unlawful, of any person under a
15 lawful detention or under arrest:

16 (A) sending the information to or requesting or
17 receiving the information from United States Citizenship and
18 Immigration Services or United States Immigration and Customs
19 Enforcement, including information regarding a person's place of
20 birth;

21 (B) maintaining the information; or

22 (C) exchanging the information with another
23 local entity or a federal or state governmental entity;

24 (3) assisting or cooperating with a federal
25 immigration officer as reasonable and necessary, including
26 providing enforcement assistance; or

27 (4) permitting a federal immigration officer to enter

1 and conduct enforcement activities at a municipal or county jail to
2 enforce federal immigration laws.

3 Sec. 364.004. DISCRIMINATION PROHIBITED. A local entity or
4 a person employed by or otherwise under the direction or control of
5 the entity may not consider race, color, language, or national
6 origin while enforcing immigration laws except to the extent
7 permitted by the United States Constitution or Texas Constitution.

8 Sec. 364.005. CITIZEN COMPLAINT; EQUITABLE RELIEF. (a)
9 Any citizen residing in the jurisdiction of a local entity may file
10 a complaint with the attorney general if the citizen offers
11 evidence to support an allegation that the entity has adopted a
12 rule, order, ordinance, or policy under which the entity prohibits
13 the enforcement of immigration laws or that the entity, by
14 consistent actions, prohibits the enforcement of those laws. The
15 citizen must include with the complaint the evidence the citizen
16 has that supports the complaint.

17 (b) If the attorney general determines that a complaint
18 filed under Subsection (a) against a local entity is valid, the
19 attorney general shall, not later than the 10th day after the date
20 of the determination, provide written notification to the entity
21 that:

22 (1) the complaint has been filed;

23 (2) the attorney general has determined that the
24 complaint is valid;

25 (3) the attorney general is authorized to file an
26 action to enjoin the violation if the entity does not come into
27 compliance with the requirements of Section 364.003 on or before

1 the 90th day after the date the notification is provided; and

2 (4) the entity will be denied state funds for the state
3 fiscal year following the year in which a final judicial
4 determination in an action brought under Subsection (c) is made.

5 (c) If the attorney general determines that a complaint
6 filed under Subsection (a) against a local entity is valid, the
7 attorney general may file a petition for a writ of mandamus or apply
8 for other appropriate equitable relief in a district court in
9 Travis County or in a county in which the principal office of the
10 entity is located to compel the entity that adopts a rule, order,
11 ordinance, or policy under which the local entity prohibits the
12 enforcement of immigration laws or that, by consistent actions,
13 prohibits the enforcement of those laws to comply with Section
14 364.003. The attorney general may recover reasonable expenses
15 incurred in obtaining relief under this subsection, including court
16 costs, reasonable attorney's fees, investigative costs, witness
17 fees, and deposition costs.

18 (d) An appeal of a suit brought under Subsection (c) is
19 governed by the procedures for accelerated appeals in civil cases
20 under the Texas Rules of Appellate Procedure. The appellate court
21 shall render its final order or judgment with the least possible
22 delay.

23 Sec. 364.006. DENIAL OF STATE FUNDS. (a) A local entity
24 may not receive state funds if the entity adopts a rule, order,
25 ordinance, or policy under which the entity prohibits the
26 enforcement of immigration laws or, by consistent actions,
27 prohibits the enforcement of immigration laws.

1 (b) State funds for a local entity shall be denied for the
2 state fiscal year following the year in which a final judicial
3 determination in an action brought under Section 364.005 is made
4 that the entity has intentionally prohibited the enforcement of
5 immigration laws.

6 (c) The comptroller shall adopt rules to implement this
7 section uniformly among the state agencies from which state funds
8 are distributed to a municipality or county.

9 (d) A local entity that has not violated Section 364.003 may
10 not be denied state funds, regardless of whether the entity is a
11 part of another entity that is in violation of that section.

12 SECTION 2. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2017.